



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

ASSIGNMENTS



CITY OF SAN DIEGO

CONSENT TO ASSIGNMENT OF LEASE AGREEMENT

This consent to assignment of lease agreement ("Consent") is made as of MARCH 10, 2006 by the City of San Diego ("CITY"), as lessor under that certain lease agreement dated October 16, 2001, filed as document No. 00-19064 in the Office of the City Clerk ("Lease"), entered into with

Magdy and Neli Athnathious (LESSEE/ASSIGNOR)

and

Lee Derickson and Heather Duncan (ASSIGNEE)

RECITALS

This Consent is made with regard to the following facts:

- A. CITY and LESSEE have entered into a Lease where CITY leased to LESSEE the property known as Ballpark Café which comprises approximately 459 square feet of the ground floor portion of the building owned by the Redevelopment Agency of the City of San Diego, located at 625 Sixth Avenue, San Diego, California, 92101, further described in the Lease ("Premises"). LESSEE also has the right to lease up to 500 square feet of storage space on a space available basis.
- B. ASSIGNOR desires to assign and ASSIGNEE agrees to assume all of the rights, title, and interest in the Lease under the provisions of the assignment letter dated January 12, 2006 ("The Assignment"), a copy of which is attached to this Consent as Exhibit A.
- C. ASSIGNOR and ASSIGNEE desire to obtain CITY'S consent to the Assignment and CITY is willing to consent to the Assignment on the following terms and conditions.

Now therefore, in consideration of the mutual covenants contained in this Consent, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows.

1. Assumption. ASSIGNEE assumes and agrees for the benefit of the CITY to be bound by, and to conform and comply with, every obligation of ASSIGNOR under the Lease after the execution of the Consent by CITY. ASSIGNOR shall remain jointly and severally liable for the payment of rents and for the performance of all obligations of ASSIGNOR under the Lease prior to the execution of the Consent by the CITY.

2. Subsequent Assignments; Recapture. This Consent does not constitute a consent to any subsequent subletting or assignment and does not relieve ASSIGNEE or any persons claiming under or through ASSIGNEE of the obligation to obtain the consent of CITY under Section 25 of the Lease.
3. Default Under the Lease. If ASSIGNEE defaults under the Lease, CITY may proceed directly against ASSIGNEE, any guarantors, or anyone else liable under the Lease without first exhausting CITY'S remedies against any other person or entity liable under the Lease to CITY.
4. Additional Consideration to CITY. Pursuant to Section 25 of the Lease, the CITY is entitled for additional consideration as determined by the City Manager. The additional consideration that ASSIGNOR shall pay to the CITY is two percent (2%) of the gross amount paid for the leasehold in connection with the approved Assignment. The payment of the additional consideration is due upon execution of the Consent by the CITY.
5. Brokerage Commission. ASSIGNOR and ASSIGNEE agree that CITY shall not be liable for any brokerage commission or finders fee in connection with the consummation of the Assignment or this Consent. ASSIGNOR and ASSIGNEE shall protect, indemnify and hold CITY harmless from any brokerage commission or finders fee in connection with the consummation of the Assignment or this Consent, and from any cost or expense (including attorney's fees) incurred by CITY in defending any claim for any brokerage commission or finders fee. The provisions of this Section 5 shall survive the expiration or earlier termination of both the Assignment and this Consent.
6. Controlling Law. The terms and provisions of this Consent will be construed in accordance with and will be governed by the laws of the State of California.
7. Captions. Captions to the sections in this Consent are included for convenience only and do not modify any of the terms of this Consent.
8. Entire Agreement; Waiver. This Consent constitutes the final, complete, and exclusive statement between the parties to this Consent pertaining to the terms of CITY'S Consent, supercedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors or assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those set forth in this Consent. Any agreement made after the date of this Consent is ineffective to modify, waive, or terminate this Consent, in whole or in part, unless that agreement is in writing, is signed by the parties to this Consent, and states that agreement modifies this Consent.
9. Waiver of Jury Trial; Attorney Fees. If any party commences litigation against any other party for the specific performance of this Consent, for damages for the breach

of this Consent or otherwise for enforcement of any remedy under this Consent, the parties waive any right to a trial by jury and, in the event of any commencement of litigation, the prevailing party shall be entitled to recover from the applicable party such costs and reasonable attorney fees as have been incurred.

10. Waiver. Except as explicitly stated in this Consent, nothing contained in this Consent will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in this Lease. In addition, the acceptance of rents by CITY from ASSIGNEE or anyone else liable under the Lease will not be deemed a waiver by CITY of any provisions of the Lease.
11. Notice. Any notice that may or must be given by any party under this Consent will be delivered (i) personally, (ii) by certified mail, return receipt requested, or (iii) by a nationally recognized overnight courier, addressed to the party to whom it is intended. Any notice given to CITY, ASSIGNOR, or ASSIGNEE shall be sent to the respective address set forth on the signature page below, or such other address as the party may designate for service of notice by a notice given in accordance with the provisions of this Section 11. A notice sent pursuant to the terms of this Section 11 shall be deemed delivered (A) when delivery is attempted, if delivered personally, (B) three (3) business days after deposit into the United States mail, or (C) the day following deposit with a nationally recognized overnight courier.
12. Capitalized Terms. All terms spelled with initial capital letter in this Consent that are not expressly defined in this Consent will have the respective meanings given such terms in the Lease.

(REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK)

CITY, ASSIGNOR, and ASSIGNEE have executed this Consent as of the date shown.

ASSIGNEE

Date: 3/6/06

By: Lee Derickson
Lee Derickson

Date: 3/6/06

By: Heather Duncan
Heather Duncan

Address of Assignee: 1051 Archer St. San Diego, CA 92109

ASSIGNOR

Date: 3.6.06

By: Magdy Athnathious
Magdy Athnathious

Date: 3.6.06

By: Neli Athanthious
Neli Athanthious

Address of Assignor: 444 West 10th St San Diego CA 92101

LESSOR: THE CITY OF SAN DIEGO

Dated: 3/9/06

By: Michael J. Aguirre

Address of Lessor: 1200 Third Ave., Suite 1700, San Diego, CA 92101

APPROVED AS TO FORM:

MICHAEL J. AGUIRRE, CITY ATTORNEY

Dated: 3/10/06

By: Deputy City Attorney

1/3/06

VB/cj

I:\WPO\2006\BALOTSKY\CONSENT TO ASSGNMENT OF LEASE-LEE DERICKSON.doc

EXHIBIT A

January 12, 2006

Andrew Phillips
Centre City Development Corporation
225 Broadway, Suite 1100
San Diego, CA 92101

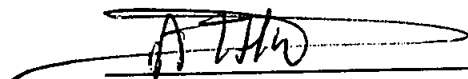
Re: Ballpark Café Lease Assignment.

Dear Mr. Phillips

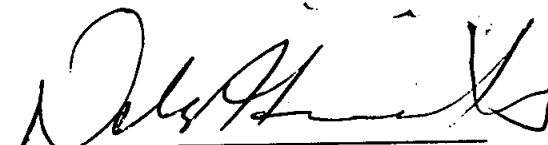
Below please find the signature of the parties involved in the assignment of the Lease between the City and Ballpark Café. We anticipate that the escrow should be closing as of January 31st, 2006.

Assignor of Lease

Magdy & Neli Athnathious wish to assign to Lee Derickson and Heather Duncan (Husband and Wife), the lease between the City of San Diego and Magdy Athnathious and Neli Athnathious, DBA Sabrina's Deli (subsequently changed to Ballpark Café), dated October 16, 2000, under the current terms and condition, in accordance with Section 25 of the lease.



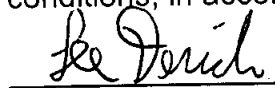
Magdy Athnathious



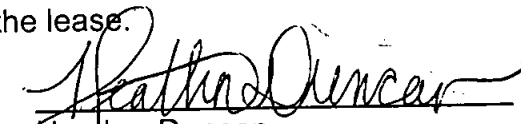
Neli Athnathious

Assignee of Lease

Lee Derickson and Heather Duncan wish to assume the lease between the City of San Diego and Magdy Athnathious and Neil Athnathious, DBA Sabrina's Deli (subsequently changed to Ballpark Café), date October 16, 2000, under the current terms and conditions, in accordance with Section 25 of the lease.



Lee Derickson



Heather Duncan

ORIGINAL

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is entered into and effective as of November 22, 2005, by and between Heather Duncan and Lee Derickson, individuals (collectively "Buyers") and Magdy Athnathious and Neli Athanthious, individuals, dba Ball Park Café (collectively "Sellers")

BACKGROUND

The Sellers are the owners of the assets of the Ballpark Café, a café located at 625 Sixth Avenue, San Diego 92101 ("Ballpark Cafe"). The Buyers desire to acquire certain of the assets and liabilities of the Sellers on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the Buyers and Sellers agree as follows:

1. Purchase and Sale.

1.1 Acquired Assets. On or before January 10, 2005, subject to the terms and conditions set forth in this Agreement, the Sellers shall assign, transfer and deliver to the Buyers and the Buyers shall acquire and take assignment and delivery of the following assets (all of which assets are hereinafter referred to collectively as the "Acquired Assets"):

(a) Any and all equipment, supplies and materials, usually located on or at, or used in conjunction with the Sellers' operations conducted at the Ballpark Cafe, including but not limited to, those items listed on Schedule 1.1 attached hereto incorporated herein.

(b) All of the Sellers' right, title and interest in the leasehold interest in the premises located at 624 Sixth Avenue, San Diego California 92101 (the "Premises").

(c) All of the Sellers' rights under any applicable licenses and permits.

(e) All of the Sellers' goodwill related to customer lists, and other intangible assets relating to the business of Sellers.

2. Purchase.

2.1 Purchase Price. The purchase price for the Acquired Assets shall be Ninety Five Thousand U.S. Dollars (\$95,000).

2.2 Payment Terms. The purchase price shall be payable as follows:

(a) Five Thousand U.S. Dollars (\$5,000) payable to Sellers' upon the signing of this Agreement, which shall be used as liquidated damages in the amount of a breach of this Agreement by the Buyer, and

(b) Ninety Thousand U.S. Dollars (\$90,000) payable to Sellers at the closing.

3. Closing.

3.1 Time and Place. The closing of the transfer and delivery of all documents and instruments necessary to consummate the transactions contemplated by this Agreement (the "Closing") shall be held at such location as may be mutually agreed upon by Sellers and Buyers at 9:00 a.m. on January 10, 2006, or at such other time, not later than January 31, 2006, it being understood and agreed that time is of the essence of this Agreement.

3.2 Transactions at Closing.

3.2.1 Deliveries by Sellers. At the Closing, the Sellers shall execute and deliver or cause to be executed and delivered to Buyers or their nominee or nominees: (a) all instruments, deeds, bills of sale, certificates of title, and other instruments of assignment or transfer with respect to the Acquired Assets as the Buyers may reasonably request and as may be necessary to vest in the Buyers good record and marketable title to all of the Acquired Assets, in each case free and clear of all Encumbrances, and (b) all documents, records, and other information that the Sellers are required to provide to the Buyers under this Agreement that have not already been provided by the Sellers.

3.2.2 Deliveries by Buyers. At the Closing, the Buyers shall execute and deliver or cause to be executed and delivered to the Sellers the remaining cash purchase price of Ninety Thousand U.S. Dollars (\$90,000).

4. Representations and Warranties of the Sellers. The Sellers, as an inducement to the Buyers to enter into this Agreement, represent and warrant to the Buyers as follows:

4.1 Authority. The Sellers have all requisite power and authority to own and hold the Acquired Assets owned or held by it; to carry on its business and to own or lease and operate its properties as such business is now conducted and such properties are now owned, leased, or operated; to execute and deliver this Agreement; and to carry out all actions required of it pursuant to the terms of this Agreement.

4.2 Title to Acquired Assets. The Seller is the lawful owner of, have good and valid record and marketable title to, and have the full right to sell, convey, transfer, assign, and deliver the Acquired Assets, without any restrictions of any kind whatsoever, all of the Acquired Assets are entirely free and clear of any security interests, liens, claims, charges, options, mortgages, debts, leases (or subleases), conditional sales agreements, or title retention against the transfer or assignment thereof (collectively, "Encumbrances"), and there are no filings in any registry of deeds in any jurisdiction showing the Sellers as debtors which create or perfect or which purport to create or perfect any Encumbrance in or on any of the Acquired Assets. At and as of the Closing, the Sellers will convey the Acquired Assets to the Buyers by deeds, bills of sale, certificates of title, and instruments of assignment and transfer effective to vest in the Buyers, and the Buyers will have good and valid record and marketable title to all of the Acquired Assets, free and clear of all Encumbrances.

4.4 Insurance. Sellers have provided accurate copies of all applicable policies of fire, liability, worker's compensation, life, property and casualty, and other insurance (collectively, the "Insurance Policies") owned or held by Sellers. Sellers acknowledge that the Insurance Policies are to be kept in full force and effect for thirty (30) days following the Closing Date. Buyers acknowledge that the Insurance Policies may be cancelled by Sellers at any time after thirty (30) days following the Closing Date.

4.5 Acquired Assets Complete. The Acquired Assets include all assets and properties of Sellers utilized in conducting Sellers' business.

4.6 Taxes. There are no taxes (whether income taxes, employment taxes, sales taxes, excise taxes, property taxes, or otherwise) imposed by any federal, state, local, or other governmental agency, authority, or subdivision, which are past due and which have not been paid by the Sellers that may otherwise become a lien on any of the Acquired Assets or that will or may interfere with the Buyers' lawful operation of the business as conducted by the Sellers and as anticipated by the Buyers. Any taxes due on the value of the fixtures will be paid by the Buyer.

5 Representations and Warranties of the Buyers. The Buyers represents and warrants to the Sellers as follows:

5.1 Litigation. Buyers are not a party to any action, or proceeding, which would materially adversely affect Buyers' ability to consummate, or prohibit Buyers from fulfilling the obligations arising from the transaction contemplated by this Agreement.

5.2 Disclosure. No representation or warranty by the Buyers in this Agreement or in any exhibit, schedule, written statement, certificate, or other document delivered or to be delivered to the Sellers pursuant hereto or in connection with the consummation of the transactions contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact required to be stated herein or necessary to make the statements contained therein not misleading.

6. Conduct of Business by Sellers Pending Closing. The Sellers covenant and agree that, from and after the date of this Agreement and until the Closing, except as otherwise specifically consented to or approved by the Buyers in writing:

6.1 Contracts and Commitments. The Sellers shall not enter into any contract or commitment or engage in any transaction not in the usual and ordinary course of business and consistent with the business practices of such Sellers.

6.2 Insurance. The Sellers shall maintain the Insurance Policies as currently in effect for a period of not less than thirty (30) days after the Closing Date.

6.3 Compliance with Laws. The Sellers shall duly comply with all laws, regulations, and orders applicable with respect to its business or the Acquired Assets or as may be required for the valid and effective transfer of the Acquired Assets..

7. Conditions Precedent to Buyers' Obligations. The obligation of the Buyers to consummate the Closing shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions (to the extent noncompliance is not waived in writing by the Buyers).

7.1 Representations and Warranties True at Closing. The representations and warranties made by the Sellers in this Agreement shall be true and correct at and as of the Closing Date with the same effect as though, made or given at and as of the Closing Date.

7.2 Compliance with Agreement. The Sellers shall have performed and complied with all of its obligations under this Agreement to be performed or complied with by it on or before the Closing Date.

7.4 Government Approvals. The Buyers shall have received all licenses, permits, and other governmental approvals deemed necessary in the opinion of the Buyer's counsel to own the Acquired Assets and operate the businesses currently carried on by the Sellers with the Acquired Assets, including but not limited to the transfer of the current liquor license held by the Ballpark Café and the Sellers and the necessary permits to fence in the front sidewalk area.

8. Conditions Precedent to Sellers' Obligations. The obligation of the Sellers to consummate the Closing shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions (to the extent noncompliance is not waived in writing by the Sellers):

8.1 Compliance with Agreement. The Buyers shall have preformed and complied with all of its obligations under this Agreement, to be preformed or complied with by it on or before the Closing Date.

8.2 Proceedings and Documents Satisfactory. All proceedings in connection with the transactions contemplated by this Agreement and all certificates and documents delivered to the Sellers in connection with the transactions contemplated by this Agreement shall be satisfactory in all reasonable respects to the Sellers and the Sellers' counsel, and the Sellers shall have received the originals or certified or other copies of all such records and documents as the Sellers may reasonably request.

9. Certain Substantive Provisions.

9.1 Expenses. All expenses of the preparation, execution, and consummation of this Agreement and of the transactions contemplated hereby, including without limitation, attorneys', accountants', and outside advisors' fees and disbursements, shall be borne by the party incurring such expenses.

9.2 Notices. All notices, demands, and other communications hereunder shall be in writing or by written telecommunication, and shall be deemed to have been duly given if delivered personally or if mailed by certified mail, return receipt requested, postage prepaid, or sent by written telecommunication, as follows:

If to the Sellers, to:

Magdy Athnathious

*444 West C St Ste 170
San Diego, Ca 92101*

If to the Buyers, to:

Lee Derickson
Heather Duncan
1051 Archer Street
San Diego, California 92109

Any party may change its notice address by delivering appropriate written notice to the other party.

9.3 Entire Agreement. This Agreement contains the entire understanding of the parties, supersedes all prior agreements and understandings relating to the subject matter hereof, and shall not be amended except by a written instrument hereafter signed by both of the parties hereto.

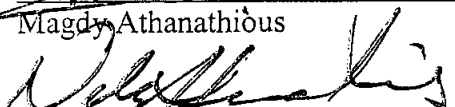
9.4 Governing Law. The validity and construction of this Agreement shall be governed by the laws of the State of California, excluding its principals of conflicts of laws.

9.5 Legal Advice. The Sellers and the Buyer acknowledge that they have had the opportunity to consult with independent counsel of their choice with regard to the transactions contemplated under this Agreement prior to the execution of this Agreement.

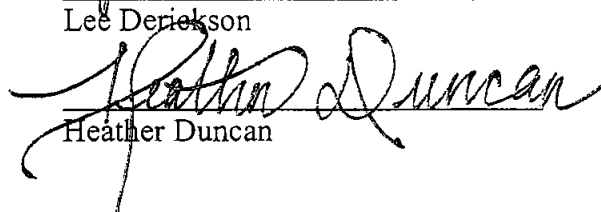
9.6 Future Attorneys Fees and Costs Related to the Agreement. If any party retains legal counsel for purposes related to this Agreement after its execution, including, but not limited to, enforcing any provision, preventing the breach of any provision, seeking damages for any alleged breach, and seeking a declaration of its rights or obligations under this Agreement, and the matter is settled by a judicial determination or arbitration, the prevailing party shall be awarded reasonable attorneys fees and costs.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized representatives as of the date and year first above written.

Sellers:


Magdy Athanathious

Neli Athnathious

Buyers:


Lee Derickson

Heather Duncan

Schedule 1.1

humidor
coffee machine
coffee grinder
ice machine
sink for hand wash
three sinks required for operation
microwave
toaster
panini grill
freezer
video camera
sandwich table
pastry case
cash register
alarm
deli case
sound system
4 tables
8 chairs

In storage area ⁴350 square feet

dry deli case
7 chairs
trash can
counter/table
three shelves
mirror
locker
pizza sign

211

January 12, 2006

Andrew Phillips
Centre City Development Corporation
225 Broadway, Suite 1100
San Diego, CA 92101

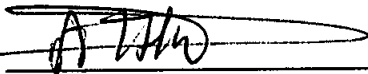
Re: Ballpark Café Lease Assignment.

Dear Mr. Phillips

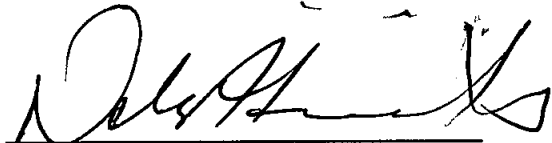
Below please find the signature of the parties involved in the assignment of the Lease between the City and Ballpark Café. We anticipate that the escrow should be closing as of January 31, 2006.

Assignor of Lease

Magdy & Neli Athnathious wish to assign to Lee Derickson and Heather Duncan (Husband and Wife), the lease between the City of San Diego and Magdy Athnathious and Neli Athnathious, DBA Sabrina's Deli (subsequently changed to Ballpark Café), dated October 16, 2000, under the current terms and condition, in accordance with Section 25 of the lease.



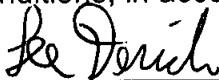
Magdy Athnathious



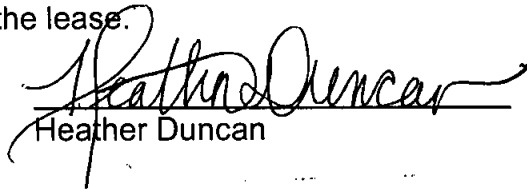
Neli Athnathious

Assignee of Lease

Lee Derickson and Heather Duncan wish to assume the lease between the City of San Diego and Magdy Athnathious and Neil Athnathious, DBA Sabrina's Deli (subsequently changed to Ballpark Café), date October 16, 2000, under the current terms and conditions, in accordance with Section 25 of the lease.



Lee Derickson



Heather Duncan